

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 SY-05 SCCT-01 USSS-00 SAJ-01

IO-11 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 /077 W

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P R 061414Z FEB 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 6279

USMISSION USBERLIN PRIORITY

INFO AMEMBASSY BERLIN

AMEMBASSY PARIS

AMEMBASSY LONDON

AMEMBASSY MOSCOW

USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 03 BONN 02056

E.O. 11652: GDS

TAGS: PGOV PFOR WB GW

SUBJECT: POSSIBLE FEDERAL PROSECUTION OF LORENZ
KIDNAPPERS

REFS: (A) USBER 214; (B) USBER 200; (C) USBER 159;

(D) BONN 1171; (E) STATE 6142

BEGIN SUMMARY. FURTHER CLARIFICATION OF THE LEGAL SITUATION PERSUADES US THAT IT WILL BE NECESSARY IN THE END FOR THE ALLIES TO AGREE THAT PROSECUTION OF THE LORENZ AND RELATED CRIMES BE HANDLED BY THE FEDERAL PROSECUTOR. WE ARE STILL WAITING FOR THE FRG TO PROVIDE FULLER INFORMATION ON THE LEGAL AND POLITICAL ASPECTS OF THE SITUATION IN THE BONN GROUP AND WOULD NOT WISH TO INDICATE A POSITION UNTIL THOSE CONSULTATIONS HAVE TAKEN PLACE. MEANWHILE, WE BELIEVE ENOUGH INFORMATION IS AVAILABLE FOR THE DEPARTMENT TO AUTHORIZE US TO ACQUIESCE IN AN EVENTUAL FRG REQUEST TO PERMIT THE FEDERAL PROSECUTOR TO HANDLE THE CASE, AND WE THEREFORE
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RECOMMEND THAT THE DEPARTMENT SEND INSTRUCTIONS TO

SUPPLEMENT THOSE IN REF (E). END SUMMARY.

1. EMBASSY AGREES WITH USBER (REFS A AND C) THAT IT WOULD BE DESIRABLE TO REACH AN ALLIED POSITION QUICKLY ON THE BASIC ISSUE OF WHETHER THE FEDERAL PROSECUTOR WILL BE PERMITTED TO HANDLE THE PROSECUTION. AS A TACTICAL MATTER, HOWEVER, IT WOULD SEEM INADVISABLE TO INDICATE A POSITION TO THE FRG UNTIL WE HAVE HAD THE FULL BONN GROUP CONSULTATIONS REQUESTED BY THE ALLIES. IN ADDITION, FRENCH POSITION MAY MAKE IT DIFFICULT TO REACH A CONSENSUS BEFORE THE GERMANS ARE PREPARED TO DISCUSS THE ISSUE WITH US.

2. AT FEBRUARY 3 BONN GROUP MEETING, FRG REP (HENZE) SAID HE HAD A REPORT FROM BERLIN THAT THE ALLIES HAD NO OBJECTION TO DR. BUBACK'S TAKING OVER THE PROSECUTION, AND ASKED WHETHER THE REPORT WAS CORRECT. UK REP (HITCH), TO THE OBVIOUS AMAZEMENT AND ANNOYANCE OF FRENCH REP, PROMPTLY RESPONDED THAT HE COULD UNDERSTAND HENZE'S HAVING RECEIVED SUCH A REPORT SINCE THE UK HAD MADE IT CLEAR IN BERLIN THAT IT HAD NO OBJECTIONS TO BUBACK'S HANDLING THE CASE. THE BRITISH WERE SIMPLY AWAITING FULLER INFORMATION ON WHAT THE CHARGES WERE TO BE.

3. FRENCH REP (BOISSIEU) INTERJECTED THAT HE AGREED THERE WERE NO LEGAL OBJECTIONS BUT THAT THE PROBLEM WAS BASICALLY A POLITICAL ONE. HE RECALLED THE SENAT STATEMENT ABOUT THE ROLE OF THE FEDERAL PROSECUTOR DURING THE LORENZ AFFAIR AND THE ALLIED RESPONSE TO THE SOVIET PROTEST AT THAT TIME, ADDING THAT THE FORTHCOMING TRIAL WOULD BE SPECTACULAR AND THAT IT WOULD BE NECESSARY TO TAKE EVERY PRECAUTION TO MAKE CERTAIN THAT WE DO NOT BECOME ENMESHED IN UNDESIRABLE CONTROVERSY.

4. US REP STATED THAT HE UNDERSTOOD THE SITUATION TO BE THAT THE FRG WAS STILL IN MIDTS OF PREPARING RESPONSES TO ALLIED QUESTIONS AND OTHER RELEVANT MATERIALS. HENZE CONFIRMED THIS AND EXPRESSED EMBARRASSMENT AT FAILURE TO PROVIDE SUBSTANTIAL REPLIES TO ALLIES.

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5. HENZE SAID IT WOULD BE DESIRABLE FOR THE ALLIES TO EXPLAIN TO THE SENAT THEIR FEELINGS ON THE SENSITIVITY OF THE MATTER. HE INDICATED THAT THE FOREIGN OFFICE WANTED TO AVOID GIVING THE IMPRESSION THAT IT WAS TRYING TO BLOCK BUBACK'S PARTICIPATION, AND SAID IT WAS ESSNETIAL THAT THE ALLIES NOT GIVE A DIFFERENT IMPRESSION IN BERLIN FROM THAT CONVEYED IN THE BONN

GROUP.

6. MATTER WAS FURTHER DISCUSSED TRIPARTITELY ON
FEBRUARY 3. ASKED BY BOISSIEU (CHAIRMAN) FOR A FULLER
EXPLANATION OF US POSITION, US REP SAID EMBASSY WAS IN
GENERAL AGREEMENT WITH USBER'S ANALYSIS OF THE SITUATION,

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INFO OCT-01 ISO-00 EURE-00 SY-05 SCCT-01 USSS-00 SAJ-01

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FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 6280

USMISSION USBERLIN PRIORITY

INFO AMEMBASSY BERLIN

AMEMBASSY PARIS

AMEMBASSY LONDON

AMEMBASSY MOSCOW

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WHICH EMBASSY UNDERSTOOD USBER HAD ALSO DISCUSSED WITH
UK AND FRENCH MISSIONS IN BERLIN. IT APPEARED THAT, IN
THE END, ALLIES WOULD ALMOST CERTAINLY HAVE TO
ACQUIESCE IN THE FEDERAL PROSECUTOR'S HANDLING THE
CASE, AND IT THEREFORE SEEMED WORTHWHILE TO BEGIN
DISCUSSING DAMAGE-LIMITING PROCEDURES. NEVERTHELESS,
US REP ADDED, THE ALLIES HAD ENTERED INTO CONSULTATIONS
WITH FRG HERE IN BONN AND IT WAS IMPORTANT THAT THE
PROMISED FRG INFORMATION BE RECEIVED IN BONN GROUP AND
THAT THESE CONSULTATIONS BE COMPLETED BEFORE

THE ALLIES GIVE THE GERMANS A POSITION.

7. BOISSIEU REITERATED HIS VIEWS THAT THE QUESTION WAS NOT JUST ONE OF DECIDING WHETHER BUBACK'S ROLE WAS LEGAL. HE THEN CLAIMED THAT THE FOREIGN OFFICE, WITH SUPPORT FROM SANNE IN THE CHANCELLERY, WAS TRYING HARD TO PERSUADE THE MINISTRY OF JUSTICE THAT THE FEDERAL PROSECUTOR SHOULD NOT HANDLE THE CASE. HE THOUGHT THE CONFIDENTIAL

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ALLIED REPS SHOULD NOT UNDERCUT THE FOREIGN OFFICE EFFORTS BY INDICATING WILLINGNESS TO APPROVE BUBACK ROLE. RATHER, HE THOUGHT ALLIES SHOULD FORMALLY REQUEST FRG TO TRY TO FIND SOME ALTERNATIVE TO THE FEDERAL PROSECUTOR'S HANDLING THE PROSECUTION. IF WE SHOULD THEN BE TOLD THAT THERE WAS NO ALTERNATIVE WE WOULD, OF COURSE, NOT PREVENT IT.

8. BOTH US AND UK REPS EXPRESSED SKEPTICISM AT BOISSIEU'S REPORT AND SUGGESTED THAT IF FOREIGN OFFICE WAS IN FACT PLAYING SUCH A ROLE IT MIGHT BE WORTHWHILE FOR THEM TO CLUE ALL THREE ALLIES IN. UK LEGAL ADVISOR (EDWARDS) TOOK STRONG POSITION THAT THE LEGAL SITUATION (WHICH HAD BEEN CREATED WITH ALLIED AGREEMENT) WAS CLEAR AND THAT THERE WAS NO BASIS FOR THE ALLIES TO INTERVENE TO PREVENT FOLLOWING NORMAL PROCEDURES. EDWARDS ALSO EXPRESSED THE VIEW THAT IT WOULD BE OFFENSIVE TO THE GERMANS AND AN UNWARRANTED INTERVENTION IN THEIR INTERNAL AFFAIRS FOR THE ALLIES TO SUGGEST THAT BUBACK HIMSELF NOT HANDLE THE CASE BUT THAT IT BE LEFT TO HIS BERLIN OFFICE. HE THOUGHT WE HAD ABSOLUTELY NO BASIS FOR ATTEMPTING TO MAKE SUCH A RULING.

9. IN BILATERAL CONVERSATION WITH HENZE (FRG REP) ON FEBRUARY 5, US REP TOOK OCCASION TO STRESS THAT THERE HAD BEEN NO CHANGE IN US POSITION THAT FULL CONSULTATIONS WERE REQUIRED BEFORE A DECISION WAS TAKEN (REF E). HENZE CONFIRMED THAT HE FULLY UNDERSTOOD AND ADDED THAT FONOFF WAS CONSIDERING ASKING A JUSTICE MINISTRY OFFICIAL TO BRIEF THE BONN GROUP ON THE LEGAL SITUATION ONCE FRG STUDY WAS COMPLETED. ASKED WHAT THE ATTITUDE OF THE FOREIGN OFFICE WAS TOWARD THE MATTER, HENZE SAID FONOFF WAS SIMPLY IN THE POSITION OF RELAYING MESSAGES BETWEEN THE MINISTRY OF JUSTICE AND BERLIN AND THE MINISTRY OF JUSTICE AND THE ALLIES.

10. COMMENT: AS NOTED ABOVE, WE AGREE WITH USBER'S ANALYSIS OF THE SITUATION, AND WE BELIEVE WE SHOULD BE PREPARED TO ACQUIESCE FAIRLY PROMPTLY IF AND WHEN THE

FRG INFORMS US THAT FEDERAL PROSECUTION IS UNAVOIDABLE
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UNDER THE LAW PREVAILING IN BERLIN. WE ALSO AGREE WITH
THE DRAFT GUIDELINES SUGGESTED IN PARA 2, REF (A),
WITH ONE SIGNIFICANT EXCEPTION. WE ARE
INCLINED TO AGREE WITH THE UK REP THAT IT WOULD BE
UNACCEPTABLE, ONCE WE HAVE ACQUIESCED IN A ROLE FOR THE
FEDERAL PROSECUTOR, TO TRY TO KEEP BUBACK HIMSELF OUT
OF THE CASE. MOREOVER, GIVEN HIS FREEWHEELING
NATURE, WE DOUBT THAT WE WOULD HAVE THE PRACTICAL MEANS O
OF ENFORCING SUCH A CAVEAT EVEN IF WE ISSUED IT. THE
MOST WE MIGHT REALISTICALLY ASK WOULD BE THAT THE FRG
URGE BUBACK AND HIS STAFF TO AVOID PROVOCATIVE
STATEMENTS OR ACTIONS, AS SUGGESTED IN PARA 2.E, REF
(A).

11. WE THEREFORE RECOMMEND THAT THE DEPARTMENT REVIEW
THE MATTER IN THE LIGHT OF THE ADDITIONAL INFORMATION
ON THE LEGAL SITUATION WHICH HAS BEEN MADE AVAILABLE
BY USBER AND PROVIDE CONTINGENCY INSTRUCTIONS MODIFYING
THOSE IN REF (E) TO PERMIT US TO MOVE AHEAD FAIRLY
QUICKLY WHEN THE TIME COMES. THIS WOULD ENABLE US TO
ENDEAVOR TO MOLD A TRIPARTITE CONSENSUS EVEN WHILE WE
ARE AWAITING A RESPONSE FROM THE GERMANS. WE DOUBT THE
UTILITY OF ASKING THE FRG TO TRY TO FIND AN ALTERNATIVE
TO FEDERAL PROSECUTION (IF IT INFORMS US THAT SUCH IS

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FM AMEMBASSY BONN
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AMEMBASSY LONDON
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UNAVOIDABLE) AND WILL TRY TO DISSUADE THE FRENCH FROM THAT INTERIM STEP UNLESS THE DEPARTMENT CONSIDERS IT DESIRABLE. BECAUSE WE ARE STILL WAITING TO HEAR THE FRG VIEWS ON THE POLITICAL AS WELL AS THE LEGAL ASPECTS OF THE SITUATION, WE WOULD NOT PROPOSE TO INFORM THE FRG OF OUR POSITION UNTIL WE HAD RECEIVED THOSE VIEWS IN THE BONN GROUP.

12. MEANWHILE, WE CAN UNDERSTAND THE POINT HENZE WAS MAKING ON POSSIBLE EMBARRASSMENT TO THE FOREIGN OFFICE (PARA 6 ABOVE). IF SENAT LEGAL EXPERT REPORTED AFTER HIS DISCUSSION WITH MISSION OFFICERS IN BERLIN THAT BECAUSE THE ALLIES WERE IN AGREEMENT ON THE LEGAL SITUATION THEY HAD NO RESERVATIONS, THIS WOULD CONFLICT WITH THE CAUTIONARY POSITION ALLIED REPS ARE TAKING IN THE BONN GROUP. PENDING A REVISION OF INSTRUCTIONS FROM THE DEPARTMENT, THEREFORE, USBER MIGHT WISH TO SEEK AN OCCASION TO REMIND THE SENAT THAT THE US WILL CONFIDENTIAL

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TAKE NO FINAL POSITION ON THE MATTER UNTIL THE REQUESTED CONSULTATIONS -- WHICH MUST INCLUDE CONSIDERATION OF THE POLITICAL AS WELL AS THE LEGAL ASPECTS -- HAVE TAKEN PLACE. SO FAR WE HAVE ONLY HEARD THE VIEWS OF THE SENAT, NOT THE FRG.

13. ACTION REQUESTED: WE RECOMMEND THAT DEPARTMENT REVIEW THE SITUATION AND PROVIDE SUPPLEMENTARY INSTRUCTIONS ALONG LINES SUGGESTED IN PARA 12, ABOVE.
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Message Attributes

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